IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.596 OF 2003

IN

SUIT NO.622 OF 2003

ICICI Home Finance Co.Ltd .. Plaintiff

versus

Rajendraprasad S.Nikhade & anr .. Defendants

...

Mr.V.Mannadiar for Plaintiff.

CORAM : D.G. KARNIK, J

DATED : 25th February, 2005.

P.C:-

1. Heard learned counsel for the plaintiff. This motion for appointment of a receiver is taken out in a mortgage suit filed for recovery of money. No grounds for appointment of a receiver are made out. The only allegation is that the debt is due and the defendant has not paid. In my view, that by itself is not sufficient for appointment of a receiver. There is a further allegation made that the defendant is trying

to dispose of the property. However, for that allegation no source of information has been disclosed. The mortgage deed does not show any right in the plaintiff to dispossess the defendant. Hence, under Order 40 Rule 1 (2) of the Code of Civil Procedure receiver cannot be appointed.

2. In the alternative, learned prays for an injunction restraining the defendant from selling the property. The plaintiff is a mortgagee and the defendant being a mortgagor is entitled in law to sell his equity of redemption. Such sale is permitted under section 6 of the Transfer of Property Act.

3. Hence, motion is dismissed.

D.G.KARNIK, J